

February 27, 2006

The Common Council met immediately following the Water Utility Board on the above date in the Meeting Room at City Hall Annex with Mayor Knowles presiding and members Askren, Tucker, Rueger, Angel, and Cooper attending. Others attending were Attorney Funkhouser; Attorney Higgins; Chief Beloit; Asst. Chief Reese; Comm. Epison; Comm. Gray; Paula Rudibaugh; Larry Williams; Nancy Sexton; Tony Funk; Jeremy Harris; Roger Cox; Code Enforcement Officer Maynard; Brandon Riordan; Mia S. Belcher; Ed Adams; Tiffany Jennings; George Fischer; Tiffani Eisenhut - Mount Vernon Democrat; Jamie Grabert - Posey County News; and arriving during the meeting, Vicki Peerman.

Mayor Knowles called the meeting to order by stating members were either mailed or hand carried copies of the minutes of their previous meeting and by asking if there were any corrections or additions. She added if not, she entertains a motion to waive their reading and to approve the minutes as presented.

Councilman Cooper moved the reading of the minutes be waived and they be approved as presented. Seconded by Councilman Angel.

Mayor Knowles stated all those in favor of the motion should signify in the affirmative; and following the vote, she reported the motion carried unanimously.

Mayor Knowles stated they will now hear the reports of the Standing Committees.

Street & Light Chairman Angel stated he has no report.

Comm. Epison stated he has no report.

Mayor Knowles asked if there were any questions ?

There were none.

Police & Dog Chairwoman Askren stated she has no report.

Chief Beloit stated he has no report.

Mayor Knowles asked if there were any questions ?

There were none.

Fire Chairman Tucker stated he has no report.

Asst. Chief Reese stated he has no report.

Mayor Knowles asked if there were any questions ?

There were none.

Sewer Chairman Rueger stated he has no report.

Mayor Knowles asked if there were any questions ?

There were none.

Mayor Knowles stated they have the Financial Report before them and any questions could be directed to Clerk-Treasurer Wolfe.

Mayor Knowles asked if the Clerk-Treasurer had any Communications for the Council ?

Clerk-Treasurer Wolfe replied not at this time.

Mayor Knowles stated on the Legal portion of the Agenda possible 3rd Reading on the Kimball/Bluff Road Ordinance in reference to truck traffic. She added she received a copy of a letter from Mr. Wilzbacher that was written to INDOT concerning the situation, but has heard nothing from the state as yet.

Councilman Cooper agreed he has also heard nothing.

Councilwoman Askren suggested they table any action until the next meeting.

Councilman Cooper asked if anyone on the Council went down there and looked at the alternate routes that had been suggested a few meetings ago ?

Councilman Rueger replied he did go down there and added it is not that big of an issue now that the trailers have been moved out and the stop sign is there.

Mayor Knowles agreed and added it does look totally different.

Council agreed to table any action for now.

Mayor Knowles stated the next item is the Ordinance of Additional Appropriations in the General Fund. She added if ordinance passes, it will have to be published and then a public hearing held.

Councilman Rueger moved the Ordinance pass on first reading. Seconded by Councilman Cooper.

Mayor Knowles requested a roll call vote.

Roll was called by the Clerk-Treasurer with Council voting as follows:

Askren - yes; Tucker - yes; Rueger - yes;

Angel - yes; Cooper - yes.

Mayor Knowles stated the motion carried unanimously.

Mayor Knowles asked if anyone in the Audience wished to address the Council ?

Tony Funk approached the podium and stated he is present in reference to abandoned vehicles. He added if the car does not run or move, it can be towed. He added the ordinance is very gray on this. He asked that the Council revisit this ordinance, it needs looked at again. He stated the demo derby race is a sanctioned sport, a hobby. He likened it to a rose garden and people that like to do that, it is the same kind of seasonal activity. He added in a demo race, there is a winner, a checkered flag, and the race bring money to the county. He again stated the ordinance needs to be readdressed.

Mayor Knowles stated the code enforcement officer goes by the Indiana Code and that code states that the vehicle has to be operable to be on the property.

Councilman Rueger stated the city ordinance is based on the Indiana Code.

Attorney Funkhouser agreed and added the city's ordinance adopts the state statute.

Mayor Knowles stated she did some investigation into this as in the past there had been some questions. She added at an IACT seminar she found out that demo cars are not treated as raceway vehicles.

Attorney Funkhouser stated raceway vehicles are exempt from the code.

Mayor Knowles agreed.

Attorney Funkhouser stated that means that in this case, the demo car is an abandoned vehicle.

Mr. Funk stated a demo race has heats and a checkered flag. He added that if everyone had lots of money they would be all be racing NASCAR.

Mayor Knowles stated in this case, the car left "running" is the winner.

Councilman Rueger stated the city gets numerous complaints on how these demo cars make the neighborhood look.

Mr. Funk replied the cars could be tarped then.

Mayor Knowles agreed they get numerous complaints, people do not want to look at them.

Mr. Funk stated he has 10 cars, five of them are running, and according to the ordinance he has 21 days to get rid of the ones that don't run.

Mayor Knowles stated in reference to the scenario he mentioned earlier, the city does not get complaints on people's flower gardens. But she added she can see where Mr. Funk is coming from. She added the problem is that people want to see the demo cars out of site, they want to see the town look neater and cleaner.

Mr. Funk stated the town has other issues besides derby cars, like tires, etc.

Mr. Maynard stated he visited Mr. Funk twice and could never get him at home, and his phone has been disconnected. He added he went to the door and informed him that the vehicle did not run, whether it is on a trailer or not, does not matter. It is a code violation. He again stated he went to Mr. Funk's twice and got no response. He added once he got no contact from Mr. Funk, he can only assume the vehicles do not run.

Mr. Funk replied they do run.

Mr. Maynard stated that Mr. Funk needs to show him they can run.

Councilman Rueger stated the state says a person has 21 days to move the vehicles.

Mr. Funk added they could always just shuffle them back and forth.

Mayor Knowles replied that is true.

Mr. Maynard added the ordinance regulates how many vehicles can be in a person's yard.

Mayor Knowles stated she thought it was under four.

Mr. Funk asked what about when they are on a licensed trailer that has taxes paid on it.

Mayor Knowles replied it matters, the code has to be enforced, if it is inoperable, it is inoperable, on a trailer or not.

Councilman Rueger stated this is more of a challenge of law for the court, the Council does not decide these issues.

Vicki Peerman arrived at the meeting.

Mr. Funk stated regardless, the CEO tags it.

Mayor Knowles stated the CEO has to enforce the Indiana Code and he is only doing his job and it appears he tried to work with Mr. Funk, he tried three times to contact Mr. Funk.

Mr. Funk stated derby season is coming on. He also mentioned that Terry Penn and other officers have come by his house and mentioned putting up a gate to block the view, but this is his last year of racing, he hates to spend that kind of money.

Mayor Knowles replied she can see Mr. Funk's side, but her office receives many complaints and the city is really trying to address this issue. She added this should have been taken care of two years ago.

Mr. Maynard stated it really isn't an issue if a car is a demo car or not. He added if Mr. Funk would give him a list of other violators, he will check them out. He added this issue was not being addressed before, but he will enforce the code. He added the car on the trailer to which Mr. Funk referenced earlier had no motor in it and he was told that the vehicle did not run. He added it is a difficult thing, the city pays him and this is what the job entails, demo or no demo. He added he can not discriminate or nothing gets done.

Mr. Funk asked if there are pictures ?

Mayor Knowles replied yes, with a digital camera.

Mr. Maynard state he has to see the car actually move.

Mr. Funk asked what if they are just shuffled around ?

Mr. Maynard replied that 20 days later, it would still be tagged, it is the same vehicle. He added at some point the law has to take over and do their job.

Mr. Funk added that racing is a hobby.

Mr. Maynard replied that the law is the law.

Mr. Funk asked if vehicle is tagged and 21 days later the person is not home when they come to take the vehicle.

Mayor Knowles replied that the owner knew it was tagged and at that point, the owner should get in touch with the CEO to show him that it runs.

Councilman Angel asked if the vehicle is stored behind a wooden privacy fence ?

Mr. Funk stated he understands the Council is trying to add beauty to the town.

Mayor Knowles stated if it is behind a wooden privacy fence, at least it would be hidden from public view.

Councilman Angel added that a fence of that type that is not inexpensive.

Attorney Funkhouser stated he can look into specific situations for them.

Mayor Knowles stated other cities do not look at derby cars as race vehicles.

Mr. Funk again stated it is a hobby.

Mayor Knowles stated it would seem to her that with that much money invested, one would think they would at least run.

Mr. Funk stated if a guy only has one motor and 21 days to move that car, that could be an issue, but that does not affect him, it could affect others though, with only one motor.

Mayor Knowles stated they should make sure the motor is in first. She then stated the council needs to try to please the masses .

Mr. Funk thanked the Council for their time.

Jeremy Harris approached and stated if a car is on a trailer, then the city would have a stolen trailer on their hands. He then stated he does not understand why a car on a licensed trailer can be tagged. He then questioned boats and trailers.

Mayor Knowles stated the CEO has the authority to enforce the code.

Mr. Harris again stated, they would have a stolen trailer on their hands.

Mr. Roger Cox approached and stated he is sorry he looks the way he does, he had no planned on coming to the meeting. He then added the cars are prepared to race and things need to be kept around because it is complicated to switch motors from one car to another. He referenced the complaints the city receives, if all derby drivers got together and complained about the cars being gone, that would be a big turnout. He asked what is next, motorcycles, boats, the drivers have rights too and the city has no business to get involved with this. He then stated about all of a person's freedoms are just about gone. He added this could affect the county fair, the race makes money off those derby cars, they could even put Auto Zone out of business. He concluded by adding soon the city will be flooded with derby cars.

Mayor Knowles replied then the CEO will tag them.

Mr. Cox stated she was not mayor before, and it was not being enforced then. He added the previous mayor did not touch the issue due to Birchie Stillwagoner running the water works.

Mayor Knowles stated they have to go by the Indiana Code.

Mr. Cox stated a derby car is a race car.

Mayor Knowles stated Mr. Cox is entitled to his opinion, but other cities and towns are not viewing them as race cars.

Mr. Cox stated it is a sport nationwide, the races are sanctioned and they are race cars. He then stated a whole lot more are coming to town.

Attorney Funkhouser read the Indiana Code relating to abandoned vehicles and according to it, derby cars are okay to tag.

Mayor Knowles stated that other cities and towns do not consider them race cars.

Councilman Tucker stated this is really not a council issue, it is more of a Board of Works issue.

Mayor Knowles stated the drivers that have issues should challenge this in court.

Councilman Rueger agreed and added it is a state issue.

Councilman Angel stated the state statutes override city ordinances.

Councilman Rueger agreed they can not override the state, the drivers can go above the city to the state, or they can challenge this in court.

Mayor Knowles agreed and added the court would have to say derby cars are exempt.

Councilman Rueger stated the mass of drivers could write a letter to the state.

Mayor Knowles suggested they write to Mr. VanHaaften and Mr. Lutz.

Mr. Funk again thanked the Council for their time.

Mr. Maynard asked if this is how the Council wants this law enforced ?

Councilman Cooper replied actually the Board of Works covers this, but suggested Mr. Maynard just keep doing his job.

Councilman Angel stated if a vehicle is on a plated trailer, only the vehicle would be taken, not the trailer.

Councilman Rueger stated Mr. Maynard needs to follow the law.

Mayor Knowles asked if anyone else in the Audience wished to address the Council ?

Ed Adams approached and stated it is a good thing that people get to see these meetings on TV, but people need to be able to hear the Council better.

Mayor Knowles asked if anyone else in the Audience wished to address the Council ?

There was no response.

Mayor Knowles asked if there was any Old Business ?

There was none.

Mayor Knowles asked if there was any New Business ?

Councilman Cooper asked about the money received in lieu of annexation from Farm Bureau, he wondered if that could be put back into water and sewer for the money they had spent on the project.

Mayor Knowles replied that actually it is not up to the Council, the Council only appropriates the money, they do not get to say where it is spent.

Councilman Cooper stated he would like to see \$15,000 go to water and \$8,000 to sewer, the utilities are not in good shape, that is his suggestion.

Mayor Knowles asked if he is referring to the money the Council spent on Bose McKinney, exactly what money are they wanting to replace ? She stated the Water Utility Board paid Bose McKinney \$53,561.22; 80% was on the EMC issue; and 10-15% was the for the west side annexation. She added Bonar was paid around \$7,000, but they are not attorneys; Ice Miller was paid around \$54,000 on the Morley issue; and \$5,000 was paid to London Witte on the rate study, all approved by the Water Utility Board.

Councilman Cooper stated he is suggesting only what was spent on the west side annexation. He added he can get figures, but he believes it was \$15,000 water and \$8,000 sewer.

Mayor Knowles replied this can be taken under advisement.

Councilman Tucker agreed it was only right to pay the utilities back.

Councilman Cooper agreed and added he would just like to see them be reimbursed.

Mayor Knowles added that if the area had been annexed, that money would not have gone to water and sewer that operate off what they bring in, it would have gone to the General Fund or used to lower the tax rate for the city.

Councilman Tucker stated if the annexation had gone through the money would have gone to a special fund.

Attorney Higgins stated that it would take three years to capture all or part of the money from the annexed area, and it would have been tax money that was captured. She added that would also have meant they would have lost the 25% surcharge on the water.

Mayor Knowles stated she thought it depended on the size of the annexed area how much would go to the taxpayer, unless they received special permission from the Department of Local Government Finance.

Attorney Higgins replied it really depends on if the annexation was voluntary or involuntary.

Mayor Knowles added the west side was not a voluntary annexation. She then stated the facts that she mentioned was information she had gotten from Chris Janak.

Councilman Tucker asked if they can pay back the water and sewer with this money ?

Attorney Higgins replied this is dangerous territory for her and she is not familiar with the agreement, to what fund money was to go, etc. She added she really needs a copy of the agreement as a new fund may need to be set up, etc.

Mayor Knowles asked if there was any other New Business ?

Councilman Tucker questioned the ordinance on Additional Appropriations the Council had before them.

Mayor Knowles replied they had already taken care of that under Legals.

Mayor Knowles stated they will now hear the reports of the Districts.

1st District Councilwoman Askren stated she has no report.

2nd District Councilman Tucker stated he has no report.

3rd District Councilman Rueger stated he has no report.

4th District Councilman Angel stated he has no report.

Councilman-at-Large Cooper stated he has no report.

Mayor Knowles stated there is a meeting on March 7th at First United Methodist Church in Wesley Hall on the downtown plan study and they will also hold a town hall meeting at that time.

Mayor Knowles stated if there were no further business, she entertains a motion to adjourn.

Councilman Rueger moved the meeting be adjourned. Seconded by Councilman Cooper.

Mayor Knowles stated all those in favor of the motion should signify in the affirmative; and following the vote, she reported the motion carried unanimously and adjourned the meeting.

Rosemary L. Knowles

Mayor

ATTEST:

Cristi L. Wolfe

Clerk-Treasurer